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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/811,681	03/29/2004	Russell J. Memory	FC0072-2	2971

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CNH AMERICA LLC
INTELLECTUAL PROPERTY LAW DEPARTMENT
700 STATE STREET
RACINE, WI 53404

EXAMINER

NOVOSAD, CHRISTOPHER J

ART UNIT	PAPER NUMBER
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3671

DATE MAILED: 08/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/811,681

Applicant(s)

MEMORY, RUSSELL J. 

Examiner

Christopher J. Novosad

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-3,5 and 6 is/are rejected.
- 7) ☒ Claim(s) 4 and 7 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>03/29/04</u> . | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tomaszek in view of Takemoto *et al.*

With respect to claim 1, Tomaszek shows a method of conveying particulate material (abstract, line 6) from a seeder (Figs. 3 and 4) having a container 71 with a floor (lower portion of 71) for holding a supply of the particulate material (abstract, line 6) and a metering mechanism 83,28,47 for dispensing the particulate material (abstract, line 6), comprising the steps of:

allowing said particulate material (abstract, line 6) within the container 71 to drain by gravity into the metering mechanism 83,28,47 (Fig. 3); and

rotating an auger 79 housed within a trough 73 in a floor member (lower portion of 71) of the container 71 to deliver any remaining particulate material (abstract, line 6) within the container 71 to the metering mechanism 83,28,47.

With respect to claim 5, the allowing step is enhanced by the shape of said floor (lower portion of 71) of the container 71 to drain particulate material (abstract, line 6) both vertically and horizontally into the metering mechanism 83,28,47.

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As to claim 6, the rotating step is accomplished by initiating a motor 81 connected to an end of the auger 79 remote from the metering mechanism 83,28,47.

The claims distinguish over Tomaszek in requiring (1) sensing a shortage of supply of said particulate material to be dispensed from the metering mechanism as a result of the allowing step (as required in claim 1); (2) the sensing step to include sensing a lack of sufficient supply of particulate material within the metering mechanism (as required in claim 2); and (3) the sensing step to include sensing a predetermined level of supply of particulate material within said container with an optical sensor (as required in claim 3).

With respect to (1) and (2), note col. 13, lines 41-43 of Takemoto *et al.*

As to (3), note col. 11, lines 13, 14, 16 and 17 of Takemoto *et al.*

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have utilized the sensing steps of Takemoto *et al.* in the apparatus of Tomaszek for more efficient dispensing.

Claims 1-3 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over McGann in view of Takemoto *et al.*

With respect to claim 1, McGann shows a method of conveying particulate material (col. 1, line 5) from a seeder (Figs. 9 and 10) having a container 43 with a floor (unnumbered) for holding a supply of the particulate material (col. 1, line 5) and a metering mechanism 51,52 for dispensing the particulate material (col. 1, line 5), comprising the steps of:

allowing the particulate material (col. 1, line 5) within the container 43 to drain by gravity into the metering mechanism 51,52; and

rotating an auger ("screw...vanes" 45B,45C; Fig. 7) housed within a trough (unnumbered) in a floor member (lower portion of 43) of the container 43 to deliver any remaining particulate material (col. 1, line 5) within the container 43 to the metering mechanism 51,52.

With respect to claim 5, the allowing step is enhanced by the shape of said floor (lower portion of 43) of the container 43 to drain particulate material (col. 1, line 5) both vertically and horizontally into the metering mechanism 51,52.

The claims distinguish over Tomaszek in requiring (1) sensing a shortage of supply of said particulate material to be dispensed from the metering mechanism as a result of the allowing step (as required in claim 1); (2) the sensing step to include sensing a lack of sufficient supply of particulate material within the metering mechanism (as required in claim 2); and (3) the sensing step to include sensing a predetermined level of supply of particulate material within said container with an optical sensor (as required in claim 3).

With respect to (1) and (2), note col. 13, lines 41-43 of Takemoto *et al.*

As to (3), note col. 11, lines 13, 14, 16 and 17 of Takemoto *et al.*

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have utilized the sensing steps of Takemoto *et al.* in the apparatus of McGann for more efficient dispensing.

Allowable Subject Matter

Claims 4 and 7 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher J. Novosad whose telephone number is 703-308-2246. The examiner can normally be reached on Monday-Thursday 5:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Will can be reached at 703-308-3870. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Christopher J. Novosad
Primary Examiner
Art Unit 3671

August 11, 2004